

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

ROCKINGHAM, SS.

JANUARY TERM, 2001

No. 99-E-0692

Evelyn Sirrell, et al.

v.

The State of New Hampshire, et al.

RESPONSE TO LEGISLATIVE MOTION

NOW COMES the State of New Hampshire and the Department of Revenue Administration (the State), by and through the Attorney General, and in response to the Motion of the President of the New Hampshire Senate and the Speaker of the New Hampshire House, state as follows:

1. In reply to Paragraph 1, the State, given the importance of the matter under review, recognizes and supports the right of the President of the Senate and the Speaker of the House to address the court as *amici curiae* and to assert the interests of the legislative branch of government.

2. In reply to Paragraph 2, the State acknowledges the concern expressed by the *amici curiae* with what the Court apparently understood to be the position of the Attorney General's Office with respect to an assent to a remedy.

3. The State in response to Paragraph 3, acknowledges the concerns expressed by the *amici curiae* in Paragraph 3 with respect to the constitutional prerogatives of

the legislative branch of government and agrees that if the Attorney General assented to any settlement in excess of the statutory limit that he would have acted beyond the authority vested in him by the New Hampshire Legislature. By way of further response, the Attorney General asserts that he did not agree to waive the remedy phase of the trial or to waive a contest of the form and scope of any remedy.

4. The Attorney General agrees with the statement of the *amici curiae* contained in Paragraph 4 of their motion.

5. The State agrees with the assertion of the *amici curiae* that a remedy which flows in consequence of the Court's decision in the *Sirrell* case could have significant adverse consequences for the State's financial health and further acknowledges that the New Hampshire Supreme Court in its *Claremont II* decision did provide the Legislature a reasonable time to create an orderly transition to a new system and did hold the present funding mechanism in effect until a new, constitutional tax scheme could be enacted or until the defects identified in the present system could be corrected.

WHEREFORE, the State, to the extent indicated in this response, assents to the right of the Senate President and the Speaker of the House to appear and be heard as *amici curiae*, and the State, in so assenting, does so without prejudice to its right to further respond to the Court's order.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its Attorneys

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January 26, 2001

I hereby certify that I have this date mailed, postage prepaid, a copy of the State's Response to Legislative Motion in the above-entitled matter to Thomas M. Closson, Esquire, Richard J. Lehmann, Esquire and Betsy B. Miller, Esquire.

Philip T. McLaughlin

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